

**Dissent of Commissioner Michel P. Florio on Alternate Resolution E-4436,  
Approving Pacific Gas & Electric's (PG&E) request for approval of a Power  
Purchase Agreement (PPA) with North Star Solar, LLC  
October 20, 2011**

I support denying PG&E's request for approval of a PPA with North Star. This contract is simply not competitive with available alternatives.

For example, in Item #15 on today's agenda, we approved a contract between Arlington Valley Solar and SDG&E that was filed the day before the amendment to this contract. The price of Arlington Valley is below the Market Price Referent, but the price for North Star is above the Market Price Referent. The dollar difference between the North Star PPA and the Arlington contract is significant. This example is just one of many comparisons I make in my conclusion that the North Star PPA is uncompetitive.

The alternate does not claim that the price in the North Star PPA is competitive with the current market. The alternate agrees that this deal is out of market. Nevertheless, the alternate approves the contract finding that "North Star and PG&E re-negotiated the contract price in good faith to account for the disparity in pricing with similar projects" and that "the contract price reflects North Star's best available offer."

I have no doubt that the parties to these negotiations acted in good faith; however, I am concerned with the standard of review on which the alternate relies. Even if this was the developer's best offer, the appropriate standard of review is a comparison to other *competitive offers*, not whether or not it is the lowest price this particular seller can offer.

The real issue is whether we are giving ratepayers the best deal we can get for renewable power. I am especially disturbed by the language in the alternate on page 11, that "it is unfair to penalize North Star for PG&E's extended contracting process, and the associated regulatory approval risk that is a by-product of PG&E's lengthy contracting process." I cannot accept the suggestion that fairness to the developer should be our primary concern here. Our statutory mandate is to protect ratepayers and establish just and reasonable rates. I believe that it is dangerous and misguided to suggest that ratepayers should pay more simply because the utility's process was not fair to the developer. Fairness to developers and utilities and others is part of what we need to

consider here. I am sympathetic to the tough job that they have. We should work to improve the process to be fair to them, but at the end of the day fairness to ratepayers has to be our first priority. Why should they be punished for the fact that PG&E's negotiation process took so long?

In contrast to the alternate, the staff resolution, which I support, fairly compares the North Star PPA with other solar PV projects with similar online dates, viability scores, and economic benefits to California. Juxtaposed to these benchmarks, the North Star PPA is clearly not the best choice for PG&E's ratepayers. I emphasize the word "choice" because the alternative to this contract is a different contract with another developer at a lower price. What about the fairness to that developer, who now will not get a contract?

On the project viability issue, I should point out that the Independent Evaluator has stated, at page 55 of the Draft Resolution, that this project is unlikely to meet its scheduled commercial operation date of June 30, 2013, and that the transmission upgrades needed to interconnect this plant could take three to four years. In the Independent Evaluator's opinion, the viability of this project is very much in question. From my perspective, this non-competitive power purchase agreement can not be justified on the basis that this project is more viable than available alternatives.

I want to emphasize that my vote today is in no sense anti-renewables. Rather it is pro-competitive renewables. In order for our sustainable energy policy to be successful, it has to be economically sustainable as well. In our current economic environment, I am concerned that if we continue to impose unnecessary costs on consumers there may very well be a backlash against renewables and the whole program may be placed in jeopardy.

I believe that I was appointed to this Commission to help advance the Governor's energy policies in the most cost-effective manner possible. Having the courage to vote "no" on this contract is the best way to achieve that goal.

Respectfully,

A handwritten signature in dark ink, appearing to read "M. Florio". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.